

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

O R D E R

Chokharam v. The Raj.State Road Transport
Corpn., Jaipur & Ors.

S.B.CIVIL WRIT PETITION NO.5469/1994
under Article 226 of the
Constitution of India.

Date of Order : 1st August, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. A.K.Rajvanshy, for the petitioner.
Mr. B.S.Bhati, for the respondents.

BY THE COURT :

Due to low vision the petitioner, a driver working with Rajasthan State Road Transport Corporation (hereinafter referred to as "the Corporation"), was declared unfit to work as such by a medical board. The employer Corporation accordingly under an order dated 13.7.1990 terminated the petitioner from services on the ground of continued ill health. The grievance of the petitioner in the instant petition for writ is that the respondents neither offered him alternative employment nor compensated him adequately in terms of money.

The main contention of the counsel for the petitioner is that in view of directions given by Hon'ble Supreme Court in the case of Anand Bihari v. Rajasthan State Road Transport Corporation (AIR 1991 SC 1003) a scheme dated 22.2.1991 was framed by the Corporation making obligatory for the Corporation either to offer suitable alternative employment or to make payment of adequate compensation to an employee terminated on the ground of continued ill health. The respondents have not give effect to the said scheme qua the petitioner. The scheme notified under the order dated 22.2.1991 reads as under:-

“The Hon'ble Supreme Court, while deciding the Civil Appeals Nos.1859-63 of 1990 in the matter of Anand Behari and others has, vide its order dated 20.12.90, directed that the drivers who are retired on the grounds of defective eye sight after proper medical examination shall in addition to the retirement benefits, be offered any other alternative job which may be available and which he is eligible to perform. And in case no such alternative job is available, the driver shall be paid compensatory amount as per the following scheme which would be available to him. Since the Corporation does not have vacancies in the posts or cadres which these drivers may be eligible to perform, it is hereby ordered that these drivers should be paid compensation as below:-

- (a) where the employee has put in 5 years' or less than 5 years' service, the amount of compensation shall be equivalent to 7 days' salary per year of the balance of his service;
- (b) where the employees has put in more than 5 years' but less than 10 years' service, the amount of compensation shall be equivalent to 15 days' salary per year of the balance of his service;
- (c) where the employee has put in more than 10 years' but less than 15 years' service, the amount of compensation shall be equivalent to 21 days' salary per year of the balance of his service;
- (d) where the employee has put in more than 15 years' service but less than 20 years' service, the amount of compensation shall be equivalent to one month's salary per year of the balance of his service;
- (e) where the employee has put in more than 20 years service, the amount of compensation shall be equivalent to two months' salary per year of the balance of his service.

The salary will means the total monthly emoluments that the workman was drawing on the date of his retirement.”

The claim made by the petitioner in accordance with the scheme referred above dated 22.2.1991 was rejected by the Corporation by letter

dated 15.7.1992 as the petitioner stood terminated on 13.7.1990 i.e. prior to introduction of scheme referred above.

A reply to the writ petition is filed by the respondent Corporation stating therein that the scheme dated 22.2.1991 was introduced subsequent to the termination of the petitioner from services, therefore, the same could not be made applicable for him. A preliminary objection is also raised by the respondents to the effect that the petition suffers from delay and latches as it was filed in the year 1994 i.e. after a lapse of more than 4 years from the date of termination, as such the same deserves to be dismissed on that count.

Heard the counsel for the parties.

Before coming to the merits of the case I consider it appropriate to deal with preliminary objections raised by the respondents pertaining to delay and latches on part of the petitioner.

The petitioner stood terminated from services under an order dated 13.7.1990 on the count of continued ill health. The petitioner after termination from service submitted a representation to the respondents for providing him alternative employment. The representation submitted by the petitioner was

rejected by the respondents by a communication dated 15.7.1992 which is on record as Anx.5. The petitioner thereafter submitted a notice for demand of justice to the respondents through his counsel on 24.8.1993 claiming for alternative employment or adequate compensation in lieu thereof. The respondents did not choose to respond the notice for demand of justice dated 24.8.1993. In view of all these facts I do not find any delay or latches on part of the petitioner disentitling him to maintain the present writ petition.

Beside this the petitioner is claiming compensation in terms of money. Such kind of relief can be granted by the Corporation to its former employee at any stage. It does not effect any right of Corporation or right of any other third party adversely by a flux of time. In such cases, therefore, the objection pertaining to delay in raising claim is not of any importance. In view of it the preliminary objection raised by the respondents is over ruled.

It is the position admitted that the petitioner entered in the services of the Corporation as driver on 4.3.1977 and was confirmed as such under an order dated 17.2.1981. The petitioner was terminated from service on 13.7.1990. In this manner the petitioner served the respondent Corporation for a period of more than 13 years. It is not the case of

the respondents that the services rendered by the petitioner were not satisfactory or he was guilty of misconduct. The petitioner was terminated from service on the count of low vision. It is pertinent to note here that in such an eventuality the termination from services does not amount retrenchment, therefore, the workman terminated from services on account of continued ill health is not entitled for any protection as provided under part V-A of the Industrial Disputes Act, 1947. It can be said nothing but an unfortunate of such employee. Hon'ble Supreme Court in the case of Anand Bihari (supra) while dealing with the plight of such employees and attitude of the present employer held and observed as under:-

“8.-Although the order of termination of service per se cannot be faulted on the ground of the breach of the Act, the important question that still remains to be considered is whether in the circumstances of the case and against the background of the relevant provisions of our Constitution, it can be said that the action of the Corporation is proper, equitable and justified. The facts on record show that all the workmen have put in service with the Corporation for long periods. All of them are above 40 years of age. Their superannuation age is 58 years. There is no dispute that they developed a weak or sub-normal eye-sight or lost their required vision on account of their occupation as drivers in the Corporation. As is commonly known, the

drivers of the buses run by the Corporation such as the present one, have to drive the heavy motor vehicles in sun, rain, dust and dark hours of night. In the process, they are exposed to the glaring and blazing sun light and beaming and blinding lights of the vehicles coming from the opposite direction. They are required to strain their eye-sight every moment of the driving, keeping a watchful eye on the road for the bumps, bends and slopes, and to avoid all kinds of obstacles on the way. It is this constant straining of eyes on the road which takes its inevitable toll of the vision. The very fact that in a short period, the Corporation had to terminate the services of no less than 30 drivers who are before us shows the extent of the occupational hazard to which the drivers of the Corporation are exposed during their service. It also shows that weakening of the eye-sight is not an isolated phenomenon but a widespread risk to which those who take the employment of a driver expose themselves. Yet the Corporation treats their cases in the same manner and fashion as it treats the cases of other workmen who on account of reasons not connected with the employment suffer from ill-health or continued ill-health. That by itself is discriminatory against the drivers. The discrimination against the employees such as the drivers in the present case, also ensues from the fact that whereas they have to face premature termination of service on account of disabilities contracted from their jobs, the other employees continue to serve till the date of their superannuation. Admittedly, no special provision is made and no compensatory

relief is provided in the service condition for the drivers for such premature incapacitation. There is no justification in treating the cases of workmen like drivers who are exposed to occupational diseases and disabilities on par with the other employees. The injustice, inequity and discrimination is writ large in such cases and is indefensible. The service conditions of the workmen such as the drivers in the present case, therefore, must provide for adequate safeguards to remedy the situation by compensating them in some form for the all-round loss they suffer for no fault of theirs.

10.-In other words, the Corporation has taken an unhelpful stand in the matter. The scheme with which it has come out is both unrealistic and impracticable. The Corporation has not appreciated that what we had asked them was to formulate a scheme of relief which is the legitimate due of the workmen and not a scheme on compassionate or charitable basis. . The workmen are not denizens of an Animal Farm to be eliminated ruthlessly the moment they become useless to the establishment. They have not only to live for the rest of their life but also to maintain the members of their family and other dependents, and to educate and bring up their children. Their liability in this respect at the advanced age at which they are thus retired stands multiplied. They may no longer be of use to the Corporation for the job for which they were employed, but the need of their patronage to others intensifies with the growth in their family responsibilities."

Hon'ble Supreme Court in Anand Bihari's case (supra) in view of helplessness shown by the Corporation evolved a scheme for grant of some relief to the employees like petitioner and the scheme evolved by Hon'ble Supreme Court is incorporated by the Corporation in its order dated 22.2.1991. It is true that the scheme was introduced by the Corporation on 26.2.1991 and it nowhere mentions that it is required to be implemented with retrospective effect, however, from careful reading of judgment rendered by Hon'ble Supreme Court in the case of Anand Bihari (supra) and the scheme dated 22.2.1991 it is quite clear that it is a method evolved with view to determine the compensation required to be given to an employee of the Corporation terminated from services on the count of low vision. The right for getting compensation accrues to the employee terminated from services on the count of ill health on the day of termination itself. The scheme dated 22.2.1991 is only a criteria for determining compensation. Accordingly, I am of the view that the petitioner is entitled to be compensated suitably being terminated from services on the count of ill health. The criteria prescribed under the scheme dated 22.2.1991 is a fair and suitable criteria to determine the compensation for the petitioner in lieu of his premature termination from service. The petitioner stood terminated from services in the year 1990 and at that time his age was about 50

years. Looking to this fact now in the year 2005 I do not consider it appropriate to direct the respondents to offer alternative employment to the petitioner. However, the petitioner is certainly entitled to be compensated in terms of money in accordance with the formula prescribed under the scheme dated 22.2.1991. The petitioner has served the respondent Corporation for more than 13 years, therefore, his case is required to be considered in category "C" as mentioned in office order dated 22.2.1991.

Accordingly, the writ petition is allowed. The respondents are directed to make payment of compensation to the petitioner in accordance with clause "C" of office order dated 22.2.1991 within a period of three months from today with interest @ 6.5% per annum.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.